

## Federal Acquisition Regulation

## 49.101

### 49.002 Applicability.

(a) This part applies to contracts that provide for termination for the convenience of the Government or for the default of the contractor (see also 13.302-4).

(b) Contractors shall use this part, unless inappropriate, to settle subcontracts terminated as a result of modification of prime contracts. The contracting officer shall use this part as a guide in evaluating settlements of subcontracts terminated for the convenience of a contractor whenever the settlement will be the basis of a proposal for reimbursement from the Government under a cost-reimbursement contract.

(c) The contracting officer may use this part in determining an equitable adjustment resulting from a modification under the Changes clause of any contract, except cost-reimbursement contracts.

(d) When action to be taken or authority to be exercised under this part depends upon the *amount* of the settlement proposal, that amount shall be determined by deducting from the gross settlement proposed the amounts payable for completed articles or work at the contract price and amounts for the settlement of subcontractor settlement proposals. Credits for retention or other disposal of termination inventory and amounts for advance or partial payments shall not be deducted.

[48 FR 42447, Sept. 19, 1983, as amended at 62 FR 64927, Dec. 9, 1997]

## Subpart 49.1—General Principles

### 49.100 Scope of subpart.

(a) This subpart deals with—

(1) The authority and responsibility of contracting officers to terminate contracts in whole or in part for the convenience of the Government or for default;

(2) Duties of the contractor and the contracting officer after issuance of the notice of termination;

(3) General procedures for the settlement of terminated contracts; and

(4) Settlement agreements.

(b) Additional principles applicable to the termination for convenience and settlement of fixed-price and cost-re-

imbursement contracts are included in subparts 49.2 and 49.3. Additional principles applicable to the termination of contracts for default are included in subpart 49.4.

### 49.101 Authorities and responsibilities.

(a) The termination clauses or other contract clauses authorize contracting officers to terminate contracts for convenience, or for default, and to enter into settlement agreements under this regulation.

(b) The contracting officer shall terminate contracts, whether for default or convenience, only when it is in the Government's interest. The contracting officer shall effect a no-cost settlement instead of issuing a termination notice when (1) it is known that the contractor will accept one, (2) Government property was not furnished, and (3) there are no outstanding payments, debts due the Government, or other contractor obligations.

(c) When the price of the undelivered balance of the contract is less than \$5,000, the contract should not normally be terminated for convenience but should be permitted to run to completion.

(d) After the contracting officer issues a notice of termination, the termination contracting officer (TCO) is responsible for negotiating any settlement with the contractor, including a no-cost settlement if appropriate. Auditors and TCO's shall promptly schedule and complete audit reviews and negotiations, giving particular attention to the need for timely action on all settlements involving small business concerns.

(e) If the same item is under contract with both large and small business concerns and it is necessary to terminate for convenience part of the units still to be delivered, preference shall be given to the continuing performance of small business contracts over large business contracts unless the chief of the contracting office determines that this is not in the Government's interest.

(f) The contracting officer is responsible for the release of excess funds resulting from the termination unless

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this responsibility is specifically delegated to the TCO.

[48 FR 42447, Sept. 19, 1983, as amended at 55 FR 52797, Dec. 21, 1990; 56 FR 67134, Dec. 27, 1991]

#### 49.102 Notice of termination.

(a) *General.* The contracting officer shall terminate contracts for convenience or default only by a written notice to the contractor (see 49.601). When the notice is mailed, it shall be sent by certified mail, return receipt requested. When the contracting office arranges for hand delivery of the notice, a written acknowledgment shall be obtained from the contractor. The notice shall state—

(1) That the contract is being terminated for the convenience of the Government (or for default) under the contract clause authorizing the termination;

(2) The effective date of termination;

(3) The extent of termination;

(4) Any special instructions; and

(5) The steps the contractor should take to minimize the impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force (see paragraph (g) of the notice in 49.601-2). If the termination notice is by telegram, include these *steps* in the confirming letter or modification.

(b) *Distribution of copies.* The contracting officer shall simultaneously send the termination notice to the contractor, and a copy to the contract administration office and to any known assignee, guarantor, or surety of the contractor.

(c) *Amendment of termination notice.* The contracting officer may amend a termination notice to—

(1) Correct nonsubstantive mistakes in the notice;

(2) Add supplemental data or instructions; or

(3) Rescind the notice if it is determined that items terminated had been completed or shipped before the contractor's receipt of the notice.

(d) *Reinstatement of terminated contracts.* Upon written consent of the contractor, the contracting office may reinstate the terminated portion of a contract in whole or in part by amend-

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ing the notice of termination if it has been determined in writing that—

(1) Circumstances clearly indicate a requirement for the terminated items; and

(2) Reinstatement is advantageous to the Government.

#### 49.103 Methods of settlement.

Settlement of terminated cost-reimbursement contracts and fixed-price contracts terminated for convenience may be effected by (a) negotiated agreement, (b) determination by the TCO, (c) costing-out under vouchers using SF 1034, Public Voucher for Purchases and Services Other Than Personal, for cost-reimbursement contracts (as prescribed in subpart 49.3), or (d) a combination of these methods. When possible, the TCO should negotiate a fair and prompt settlement with the contractor. The TCO shall settle a settlement proposal by determination only when it cannot be settled by agreement.

#### 49.104 Duties of prime contractor after receipt of notice of termination.

After receipt of the notice of termination, the contractor shall comply with the notice and the termination clause of the contract, except as otherwise directed by the TCO. The notice and clause applicable to convenience terminations generally require that the contractor—

(a) Stop work immediately on the terminated portion of the contract and stop placing subcontracts thereunder;

(b) Terminate all subcontracts related to the terminated portion of the prime contract;

(c) Immediately advise the TCO of any special circumstances precluding the stoppage of work;

(d) Perform the continued portion of the contract and submit promptly any request for an equitable adjustment of price for the continued portion, supported by evidence of any increase in the cost, if the termination is partial;

(e) Take necessary or directed action to protect and preserve property in the contractor's possession in which the Government has or may acquire an interest and, as directed by the TCO, deliver the property to the Government;